

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CR No.7706 of 2016
Date of Decision:23.03.2018**

Azim Wasif

...Petitioner

Versus

Anish Gupta and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Ravish Bansal, Advocate for the petitioner.
Mr.Puneet Jindal, Sr. Advocate with
Mr.Varun Goyal, Advocate for the respondents.

ANIL KSHETARPAL, J.

Defendant No.4-petitioner has challenged the order dated 28.7.2016 passed by the Civil Judge (Junior Division), Fatehgarh Sahib, directing defendant No.4 to produce the original Will dated 20.11.2006.

Plaintiffs-respondents filed a suit for mandatory injunction and permanent injunction. Defendant No.4 filed written statement and pleaded that Salman Halim had executed a registered Will in his favour on 20.11.2006. He also asserted that Salman Halim also executed general power of attorney in his favour on 15.11.2006.

Plaintiffs filed an application under Order 11 Rule 14 of the Code of Civil Procedure ('CPC' for short) for direction to defendant No.4 to produce the original Will in the court.

Defendant No.4 contested the application and pleaded that a photostat copy of the Will has been filed and the original Will is in his possession at London, where he is residing, hence, it is not possible to

produce the original Will. He pleaded that he would produce the original Will on the court file when he would be leading his evidence.

The learned trial court, after noticing various contentions of the parties, directed the plaintiffs to produce the original Will in the court while exercising its power under Order 11 Rule 14 CPC.

The defendant-petitioner has challenged the aforesaid order.

Learned counsel for the petitioner has vehemently argued that a photostat copy of the Will has already been produced and the court cannot insist upon production of the original document. He submitted that the Will is with respect to various other properties and would be required before various authorities. He has further submitted that counsel for the plaintiffs or the plaintiffs can examine the original Will when it is produced in defendants' evidence.

On the other hand, learned senior counsel for the plaintiffs-respondents has submitted that the case is now fixed for plaintiffs' evidence. He has further submitted that the dispute is with regard to the validity of the Will. He has also submitted that until and unless the original Will is produced, the plaintiffs would not be able to lead their evidence in effective manner.

This Court has considered the submissions.

The plaintiffs are to lead their evidence in affirmative. The plaintiffs are challenging the validity of the Will. The plaintiffs are required to lead evidence first of all. Unless the original Will is produced on file, the plaintiffs would not be able to lead their evidence in effective manner. As far as apprehension of the petitioner about safe custody of the Will is

concerned, appropriate request can be made to the court for keeping the testamentary document in a sealed cover in safe custody, however, the plaintiffs cannot be denied right to examine the original Will when it is placed on court file.

The argument of the learned counsel for the petitioner that the Will would be produced at the time when his client, i.e. defendant No.4 leads evidence and thereafter the plaintiffs can lead evidence in rebuttal cannot be accepted. The scope of rebuttal evidence is very limited. The plaintiffs are to lead their main evidence in affirmative. Under such circumstances, defendant No.4 has rightly been directed to produce the original Will.

As per Order 8 Rule 1-A CPC, it is the duty of defendant to produce the documents upon which the relief is claimed or relied upon by him along with the written statement. Although, it is permissible to the defendant to produce the documents subsequently with the leave of the court. However, the suit is now fixed for evidence of the plaintiffs, hence no error has been committed by the learned trial court.

The next argument of the learned counsel for the petitioner is that the Will would be required for production before various other authorities. The permission of the court can always be sought for taking back the Will for production before the authorities. Once the validity of the Will is being examined by the court, it is the duty of the defendants to produce the same.

No other argument was raised.

In view of the aforesaid discussion, the revision petition is

dismissed. Petitioner is granted one month's time to produce the Will before the learned trial court from the date of receipt of a certified copy of this Order. Pending application, if any, shall also stand disposed of.

23.03.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No